

32B-4-703 Exclusive outlets.

- (1) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to require, by agreement or otherwise, that the department or a retailer purchase a product from the industry member or the department to the exclusion in whole or in part of a product that is sold or offered for sale by another person.
- (2)
 - (a) Subsection (1) applies only to a transaction between:
 - (i) one or more industry members; and
 - (ii)
 - (A) the department; or
 - (B) one or more retailers.
 - (b) Subsection (1) does not apply to a transaction between two or more industry members, including between a manufacturer and a wholesaler.
- (3) Subsection (1) includes purchases coerced by an industry member through an act or threat of physical or economic harm, as well as through a voluntary industry member-retailer purchase agreement.
- (4)
 - (a) Subsection (1) includes a contract or agreement, written or unwritten, that has the effect of requiring the department or retailer to purchase an alcoholic product from the industry member beyond a single sales transaction.
 - (b) Examples of a contract or agreement described in Subsection (4)(a) include:
 - (i) an advertising contract between an industry member and a retailer with the express or implied requirement of the purchase of the advertiser's product; or
 - (ii) a sales contract awarded on a competitive bid basis that has the effect of prohibiting the department or retailer from purchasing from another industry member by:
 - (A) requiring that the retailer purchase a product or line of products exclusively from the industry member for the period of the agreement; or
 - (B) requiring that the retailer purchase a specific or minimum quantity during the period of the agreement.
- (5)
 - (a) Subsection (1) includes a contract, agreement, or other arrangement between an industry member and a third party nonretailer that requires the department or a retailer to purchase the industry member's product to the exclusion in whole or in part of a product sold or offered for sale by another person.
 - (b) This Subsection (5) applies whether a contract, agreement, or other arrangement originates with the industry member or the third party.
 - (c) Examples of a contract, agreement, or other arrangement described in this Subsection (5) include:
 - (i) a contract, agreement, or arrangement:
 - (A) with a third party, such as a ball club or municipal or private corporation, that is not a retailer;
 - (B) under which the third party leases the concession rights and is able to control the purchasing decisions of a retailer; and
 - (C) that requires the retailer to purchase the industry member's product to the exclusion in whole or in part of a product sold or offered for sale by another person; or
 - (ii) a contract, agreement, or arrangement with a third party nonretailer that requires a retailer to purchase the industry member's product to the exclusion in whole or in part of a product

sold or offered for sale by another person in return for which the third party provides a service or other thing of value such as:

- (A) sponsoring radio or television broadcasting;
- (B) paying for advertising; or
- (C) providing other services or things of value.

Enacted by Chapter 276, 2010 General Session